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Abstracting

EU'S REFUGEE CRISIS: FROM SUPRA-NATIONALISM TO NATIONALISM?

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Abstract

The refugee crisis of 2015-2016 revealed the strength of the idea of "national sovereignty" within Member States of the European Union indicating that not only supra-nationalism is still a nascent thinking in the Union but also inter-govermentalism readily transforms into a "self-help" mechanism to opt out from "common European" destiny in times of crisis. As such it seems that the recent refugee crisis has awakened nationalistic populism in Europe with disintegrative impact on the Union. Despite the controversial EU-Turkey joint action plan of March 2016 that effectively served to reduce the number of refugees crossing into the EU area the intergovernmental and supranational division on how to reconcile national concerns with that of the EU rules and regulations as well as humanitarian responsibility still persist.

Keywords: European Union, refugee crisis, nationalism, populism, EU-Turkey refugee deal

INTRODUCTION

Wars, civil strife and ensuing humanitarian crisis in Syria, Afghanistan and Iraq have turned into a threat of massive refugee flow for the EU. FRONTEX, the EU's external border force, places the number of migrants who crossed Europe's borders in 2015 at around 1.800.000. Seeking safety and better opportunities in Europe about 225,000 refugees crossed the Aegean Sea into Greece from April to August 2015 forcing the EU to make a deal with Turkey where almost 3 million had already been settled. Consequently, with well over a million irregular migrants and 1.3 million asylum applications in 2015 and 2016, a vast majority being from the war thorn countries (Eurostat 2017) European policy makers were paralyzed. With Dublin agreement seemed dysfunctional and the Schengen regime under serious stress the EU Member States most exposed to the new immigration wave took unilateral and largely incoherent steps in response to disproportionate share of burden.

The refugee issue of 2015-2016 revealed the strength of the "national idea" within Member States and their preference for "national sovereignty" in times of crisis (Dagi 2017). As such it seems that not only supranationalism is still a nascent idea in the Union but also intergovermentalism readily transforms into a "self-help" mechanism to opt out from "common European" destiny when crisis hits the Union. It appears that the recent refugee crisis has awakened nationalistic populism in Europe with disintegrative impact on the Union.

Unlike some old crises from which the EU had grown stronger the refugee crisis stands out unique given that effects and consequences of migration are bound to pose significant challenges of economic, demographic and sociological kind for the Member States and the Union alike. As such it requires an intergovernmental approach given the way in which the Union had responded to such common problems in the past. Yet national governments with different threat perceptions and concerned about a possible unequal distribution of the burden opt for an inter-governmental approach with an expectation to gain greater control over the decisions to respond the refugee crisis. Thus, in the face of the refugee question national governments are re-discovering their distinct national interests, and thus tend to turn inter-governmentalism into nationalism in dealing with the question of refugees in Europe. In an environment where the refugee crisis divided Member States and triggered radical opinions within each, governments forced for short term solutions and Euroscepticism an all-time high (Stylianou 2014) the European integration process appears to be in the midst of slowing down if not regressing.

The Failure of EU's Supranationalism

Despite the Schengen regime and Dublin regulations devising out a common immigration and asylum policy the EU failed to respond unanimously to the refugee crisis in 2015. Scope of the problem and uneven distribution of burden among the Member States coupled with an anxious public opinion in a political milieu of rising populism across Europe rendered the 2015 refugee crisis hard to deal with collectively.

The refugee influx proved itself to be a compelling challenge to the functioning of core domestic EU laws. The Dublin Regulation of 1997, designed to determine quickly the member state responsible to give asylum, was the first EU codification that fell victim to the crisis. Under the regulation migrants could only apply for asylum in the first country through which they entered EU borders and was exposed to deportation in case of a border violation (EC 2017). The secondary movements of the refugees from their country of entry violated the Dublin Regulations as it eliminated border controls within the EU, but it also exposed the Member States in the Mediterranean which are the gates of entry for the refugees (Aljazeera, 2016).

As the Dublin Regulations seemed flowed the Member States engaged in unilateral ad hoc measures. This included a variety of actions from the construction of border barriers in the Hungarian-Serbian border (Simicsko 2016) to the temporary suspension of Schengen visa policy by Austria (Minns and Karnitschnig 2016). While Germany and Sweden conducted an open door policy (Fraser, 2015), the Central European countries were much more skeptical with regards to a full-fledged pro-refugee policy. The recent crises and the dissatisfactory response to it by Germany and the Commission thus brought together the Visegrad Group once again after their acceptance to the EU. The

group of Poland, Hungary, Czech Republic and Slovakia expressed their mutual concern that the EU had lost control of the frontiers of the passport-free Schengen zone (Cienski 2016). Consequently, the Visegrad countries assumed that efforts to integrate Muslim immigrants in Europe had failed, migration crises were not uncontrollable and the migrants would not bring economic benefits (Hokovsky 2016). The group further declared that: "A swift implementation of measures […] to strengthen external border protection must remain the top priority if we are to prevent the 2015 scenario […] a crisis that questions the very foundations of the European Union" (Foy 2016).

In response to the crisis, the Commission proposed a renewal of the Dublin regulations to create a more equitable burden sharing system (Denisson, 2016) which proved to be in void with the categorical rejection of it by the Central European Member States (Hokovsky 2016). The Dublin regulations, which had been criticized right from its inception as inequitable, became obsolete as Angela Merkel voluntarily assumed responsibility for unconditional asylum in the aftermath of the Hungarian decision to deport unlawful migrants to their first place of residence (Holehouse 2015).

The failure of the Dublin regulations to address the refugee influx had troubling spillover effects on the Schengen regime which guarantees the free movement of people within EU borders. As it became more and more obvious during 2015 when the Union was not capable of limiting migration in their external borders, the Member States had no other choice but to temporarily reinstate border controls to secure their internal borders. As countries imposed unilateral border controls one after another, Schengen, despite being a significant achievement of the European integration project was in grave danger to a point where Merkel had to threaten other Member States to take their share of refugees for Schengen to continue functioning (Karnitschnig 2015). However, the visa regime proved itself more resilient to a state of emergency due to its specific articles under the Schengen Agreement that enabled unilateral border controls up to six months. The Member States used the serious threat that uncontrolled migration caused to public order and/or threat of terrorism as a justification to invoke the relevant articles (European Parliament 2016). Yet, it wasn't merely the well design of the EU regime which saved Schengen from failing. The considerable decrease in the pace of mass refugee influx, largely due to the EU-Turkey deal of November 2015, before the legal maximum limit of border controls was reached prevented a very likely mass breach of Schengen codes, thus the nullification of the Schengen Agreement.

The refugee crisis did not only place Schengen and Dublin regulations under significant stress the Lisbon Treaty of 2009 that granted the supranational EU institutions unprecedented competence in governing migration and asylum was brought under great risk as well. The treaty had been designed to further supranationalism enshrined in the Amsterdam Treaty by creating a uniform status of asylum valid throughout the Union, a criteria for determining the member state responsible for assessing an application and a common system of temporary protection. Moreover, it embodied the Charter of Fundamental Rights, originally adopted in 2000, making it legally binding to adhere with the rules of Geneva Convention of 1951, the Protocol of 1967 and the Treaty on the Functioning of the European Union (TFEU) for the member states. Also, in an effort to minimize the possibility of intergovernmental disagreements an article of solidarity was added to the TFEU which read: "Under the Lisbon Treaty, immigration policies are to be

governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the member states" (Raffaelli 2017).

The Lisbon Treaty did indeed authorize the supranational institutions to give binding decisions on matters of migration without the consent of Member States but resolute stands of national governments hit hard by refugee influx and prevailing public opinion unfolded after the refugee crisis made it highly risky, if not impossible. Meanwhile, the unilateral actions of the Member States and their multilateral deadlock on how to tackle the refugee crisis made the so called solidarity principle of the Lisbon Treaty void. The failure of the Justice and Home Affairs (JHA) governance regime of EU during the refugee crisis suggests that it is explicitly designed for fair weathers, not for destructive crisis.

Division in the Union: Policies and Values

From the "empty chair" crisis of 1965 to the Euro crisis of 2009, no other difficulty had divided the Member States of the EU like the recent refugee influx has done. While EU political leaders agreed for the need to preserve the "core European values", they significantly disagreed on how to do it and what qualifies as endangered European values.

A clash of intergovernmental and supranational perspectives dominated the debate, yet, with their radical proponents and in a political milieu of populism. The loudest supporters of an intergovernmental response were the right leaning nationalists who viewed the refugee/migrant crisis as more than anything else a national security issue, suggesting that losing control of their borders is suicidal for a sovereign state (Farage 2015). On the other hand, the left leaning internationalists, backing a supranational response, prioritized the crisis as a human security issue which creates a common responsibility for all under international and EU laws (Patru 2016).

The champions of intergovernmentalism-cum-nationalism were the four Central European member states, also known as the Visegrad group. For instance, the Hungarian Prime Minister Viktor Orban was very vocal on opposing the Commission's proposal for the creation of a "burden sharing regime" while having no hesitation to evoke the relevant articles of the Dublin Regulations in order to deport the illegal/irregular migrants. Not surprisingly, the Visagrad group urged that they don't only have the responsibility to protect their internal borders in times that external border protection has failed (Cienski 2016) but also they will not take Muslim migrants (Park 2015).

On the other side of the debate were the European Commission, Sweden and Germany the major defenders of supranationalism-cum-internationalists. While Germany and Sweden conducted an open door policy taking more than a million migrants during 2015-2016 (Connor, 2016), the Commission encouraged other Member States to take unpopular decisions when necessary (Holehouse 2015). The internationalists underlined the welcome culture, human rights, international/national law and the potential for migrants to bring economic benefits to justify their position. Angela Merkel, the German Chancellor, being the most vocal of them stated: "The German constitution and European values requires the protection of people's dignity. That means not only the dignity of people in Germany but it also means a global understanding of the dignity of people" (Wagstyl 2016). With both sides describing themselves as the protectors of European values the main reason behind intergovernmental disagreement on how to react lies upon a contrasting visions on which European values are in danger as a result of the refugee influx. For the

supporters of supranationalism the core European values in need of protection are human dignity, right for asylum and minority rights. This view is fully reflected by Heather A. Conley of CSIS: "Such policies would not just imperil migrants and refugees, but also the very ideals upon which the EU was found. The political response […] runs counter to the very values that the EU promotes, like protecting human life and the right to asylum" (Park, 2015).

Meanwhile, some proponents of intergovernmentalism basically argued that the Islamic culture of the migrants is in complete odds with the Western culture (Cendrowicz 2015). As Muslims make up great majority in the recent refugee surge in Europe anti-immigration sentiments were expressed by references to Muslim extremism. A growing number of Europeans tend to link the immigrant Muslim presence on the continent with jihadist assaults hitting major European cities as many believe that Islamic immigration make their country more susceptible to terrorism (Poushter 2016).

The failure of the EU institutions and the mainstream politicians led to disbelief in political institutions and mistrust in mainstream media. This public frustration in return was easily capitalized by the once marginal populist parties. While the first wave of rising populism in the XXI century EU had a leftist anti-establishment discourse in countries most affected by the 2009 Euro debt crisis, the second wave has a right wing anti-establishment discourse in countries where the chronic migration question gained salience with the recent influx of refugees (Broning 2016). Almost inevitably, the failure to respond to the external threat of mass Muslim immigration triggered an internal upsurge of nationalist populism.

Regardless of the anti-establishment political parties' failure to secure a first place in the recent elections in Austria and Holland they made unprecedented gains while enjoying the privilege to set the agenda throughout the campaign. Unquestionably, it was the Brexit referendum of June 2016 that has been the biggest victory for the nationalist politicians outside the EU's mainstream so far. With Brexit becoming a reality, the EU integration was no longer losing pace but actually regressing. Even though UK was mildly affected by the recent refugee crisis as a non-Schengen area country, it is estimated that one third of leave voters were mainly motivated by the opportunity to regain control over immigration (Ashcroft, 2016).

The nationalists ranging from the V4 Group to Nigel Farage share the view that the Christian identity of Europe, the will of the people and the sovereignty of the state are the true European values that need to be preserved. Viktor Orban, among the most outspoken in defense of intergovernmentalism summarized the nationalist concern: "Migration poses a threat, increases terrorism and crime. Mass migration fundamentally changes Europe's cultural identity. Mass migration destroys national culture. If we do not accept this view, if this does not become the European position, we will be unable to act against this threat" (The Hungarian Government 2016). Such views were hard to be reconciled with the views of the internationalists who tended to view the issue as firstly a matter of universal human rights, thus, posits that securitization of immigration issues would go against the European values. The nationalists, on the other hand, treated the issue as a matter of national sovereignty that requires taking swift unilateral decisions to protect national security as well as the European values. Despite these divergences on policy priorities and definition of European values the EU managed to reach a consensus on a common policy to avert the refugee crisis becoming an ever destructive force for the union when a deal was signed with Turkey in March 2016.

The EU-Turkey Deal: A Shaky Common Policy

The weakness of the EU laws and regulations, constantly increasing threat of Islamic terrorism and the rise of populist movements as a direct consequence of the refugee crisis compelled the internationalists to come to terms with the nationalists who advocated prevention of illegal/irregular arrivals. As the EU does not enjoy the capacity to eliminate the root causes of recent refugee outflows (stopping the civil war in Syria, for instance) it had no other choice but to externalize migration controls. Considering that the vast majority of Syrian refugees entered Europe over Turkey the European Union concentrated its efforts to reach a deal with the Turkish government which took place on 18 March 2016 through reactivation of "EU-Turkey Joint Action Plan".

Essentially, the agreement established a burden sharing model between the EU and Turkey in which new irregular migrants entering the EU territory would be sent back to Turkey with the promise of the EU to relocate one Syrian refugee from Turkey for every one sent back. Moreover, the deal envisioned visa liberalization for Turkish nationals as well as an aid of approximately €6 billion to the facility for refugees until the end of 2018 (EC, 2016). Yet, the deal was signed in an environment of mutual distrust since the EU-Turkey relations had already been deteriorating for a couple of years due to criticisms of increasing authoritarianism in Turkey (Bekdil 2017). Regardless of the failure to lift the visa requirement for the Turkish citizens, the European Parliament's decision to freeze EU accession talks with Turkey (Kanter 2016) and President Erdogan's subsequent threats to open the gates for refugees (Mortimer, 2016) the EU-Turkey Joint Action Plan has been very successful on reducing the numbers of migrants leaving Turkey for Greece (Knaus 2016).

Even though the agreement lifted the immediate pressure of the refugee crisis from the EU institutions as well as the Member States it was not exempt from criticisms. In fact, both the left and right wing actors raised several questions about the validity and implications of the deal. While the internationalists were mainly concerned about the EU dilemma regarding its high asylum standards and its indifference to a humanitarian crisis (Collett 2016) the nationalists were unhappy with the promise of visa liberation for the Turkish citizens (Banks, 2016) and the Union's chronic weak attitude towards a country blackmailing them (Stone 2016). Nevertheless, the controversial EU-Turkey refugee deal marked a turning point for the EU, though it appears shaky in the face of constant threats from Turkey of opening its gates to the refugees into Europe. This was so not only because it prevented further chaos in the area of the JHA governance and temporarily appeased populist reactions but also due to the fact that it was the first common response undertaken with the approval of all actors involved in the process rescuing the EU from an inability to respond collectively to a common problem.

CONCLUSION

The process of European integration has been long regarded to be a unique story of economic miracles, sustained development, social transformation, enduring peace, cooperation and interdependence. Regardless of its unrivaled achievements, the European project has also encountered countless failures, inabilities, disagreements and crisis. However, it wasn't until the refugee crisis of 2015-2016 that the Union with all of its member states, supranational and intergovernmental institutions was caught in such a vulnerable and exposed position as regard to its institutions, rules and regulations (Mason 2015). Yet, the recent refugee crisis in Europe did not only test EU's institutions and regulations but also its political values now contested with greater vigor by populist movements across Europe that reinvented themselves in the emerging social and political space in reaction to influx of refugees into Europe. Thus, recent refugee crisis is likely to have consequences going beyond the need for reforming Dublin regulations and saving the Schengen area as well as posing to shape political landscape of Europe. The complexities resulting from it have the potential to erode the already exhausted sense of community among the EU member counties to a bitter end.

The refugee crisis of 2015-2016 demonstrated the strength of the advocates of national sovereignty within the Member States of the EU indicating that not only supranationalism is still a nascent idea in the Union but also intergovermentalism is likely to turn into a "self-help" mechanism to opt out from the idea of a "common European" in times of crisis. Intergovernmental nature of the refugee problem has thus made a common supranational response that would serve to the benefit of all politically and culturally diverse Member States almost impossible as concerns on national interests tended to trump over common EU interests, and intergovermentalism readily evolved into nationalism. In spite of the EU-Turkey refugee agreement of March 2016 that effectively served to reduce the number of refugees crossing into the EU area the intergovernmental and supranational division on how to reconcile national concerns over the refugee question with that of the EU regulations and values remains a test-case for the future of the EU. 

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Indexing
Abstracting

THE SCOPE OF APPLICATION OF THE CHARTER'S RIGHT TO GOOD ADMINISTRATION OF THE EUROPEAN UNION

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Abstract

Article 41 of the Charter for Fundamental Rights of the EU guarantees the right to good administration as a fundamental right of the EU citizens. It seems from the wording that Article 41 applies only to the institutions, bodies and agencies of the Union, without mentioning the Member States. This gives it a narrower scope than that given in Article 51.1 concerning the scope of the Charter as a whole. This paper discusses the question of applicability of the right to good administration regarding the implications of Article 41 in this respect. The doubt that stems from this is whether the content of 51.1 prevails or, on the contrary, it must be ignored and taken as reference the particular provision in Article 41.

Keywords: good administration, Article 41, Charter of Fundamental Rights, European Union, fundamental rights

INTRODUCTION

The right of good administration is one of the fundamental rights of the EU citizens, guaranteed with article 41 of the Charter of Fundamental Rights of the EU which became legally binding with the entering into force of the Lisbon Treaty. As a written, legally binding subjective fundamental right, the right to good administration has become a "cardinal element of the Union's body of 'primary', that is 'constitutional' rules'" (Groussot and Pech 2010, 2). This right as it is defined in the Charter applies only to cases where an institution, body of agency of the EU is involved (De Luque 2003, 25) and includes several rights: impartiality and fairness, acting within a reasonable time, right to be heard, right to access to his or her file, the obligation of the administration to give reasons for its decisions, right to make good any damage, right to communicate to the institutions of the EU to any of the languages of the Treaties. While Article 41 of the Charter, limits the scope of this Article only to institutions and bodies of the EU with no mention of the Member States, Article 51.1 of the Charter of Fundamental Rights of the European Union,

states that the Charter is binding not only to the institutions and bodies of the Union, but as well as to the Member States when they apply EU law. Therefore the scope of Article 41 of the Charter it seems to be defined as being narrower than that of the Charter as a whole (Article 51 of the Charter).

I can conclude that together with the general delimitation of the scope of application carried out by Article 51.1 of the Charter, some of its precepts determine the scope of application of the rights they regulate. The problems come when the one and the other do not coincide (Isaac 2010, 116).

This paper discusses and examines the question concerning the scope of the right to good administration of Article 41 *vis-a-vis* the scope of the Charter as a whole given in Article 51.1. The paper concludes that the wording of Article 41 of the Charter in fact limits the scope of application of the right to good administration to the institutions and bodies of the EU. However, as the Professor Isaac have noted, this does not preclude the applicability of a general principle of good administration, as established by the European Court of Justice, to Member States.

ARTICLE 51 OF THE EU CHARTER: THE SCOPE

Article 51 of the Charter contains provisions concerning the general scope of the Charter. According to what is stated in this Article, the provisions of the Chapter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law (Article 51.1). This means that national authorities must respect such rights when they act within the scope or field of Union law (Groussot, Pech and Pétursson 2012, 135). When, on the other hand, they act on the basis of national law, outside the scope or field of Union law, they are not under any such obligation (Groussot, Pech and Pétursson 2012, 147).

However in the legal doctrine it is considered that Article 51.1 contains one of the most confusing and obscure clauses of the entire Charter. Namely, it is clear that the fundamental rights enshrined in the European Union are applicable to - and in - the Member States. The thing that is not so evident is which conditions should be met in order to identify that there is an "implementation" of the EU Law.

The legal analyzes show uncertainty (Eeckhout 2002, 969), disagreements (Fenger 2004, 105-113) and different opinions (Craig 2006, 502) regarding the interpretation of the words "implementation of the EU law". Even after the Charter became legally binding, there are still different views among academics in this regard. There are also a great number of studies which analyze the position of the European Court of Justice -ECJ (De Lique, op.cit, 33-34, Garcia 2002, 154). There are numerous occasions in which the ECJ has had the opportunity to decide on this issue since the 80s, when the Court has adopted the first sentences in relation to this issue (Isaac op.cit, 109). In an attempt to systematize, it can be affirmed that there are two different jurisprudential lines in terms of the extent and scope of the implementation of the Charter's provisions by the member states. The first of these (and the older) could be qualified as a narrow interpretation, and the second (the later as regards the date) can be qualified as a broad interpretation and defends the duty of the Member States to respect fundamental rights when their action falls within the scope of application of the EU law.

In line with the narrow interpretation, in the ECJ's judgment from 13 July 1989 (Case C-5/88) it was said that when the Member States implement Community rules, they must, as far as possible, apply those rules in accordance with their requirements (§19). Restrictions may be imposed on the exercise of those rights, provided that "those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights" (§18). This narrow interpretation is followed by the judgment of 24 March 1994 in the case C-2/92 (§16), the judgment of 13 April 2000 in the case C-292/97 (§§ 37, 45 and 58), the judgment of 10 July 2003 in the joint cases C-20/00 and 64/00 (§§ 68 and 88) and judgment of 3 May 2005 in the joint cases C-387/02, 391/02 and 403/02 (§§ 69). The Judgment of the ECJ of 27 June 2006, Case C-540/03 (§§ 104 and 105) deserves special mention because it is the first in which the Court has applied the Charter of Fundamental Rights of the European Union to resolve the dispute brought before the ECJ. The second jurisprudential line (also called "broad interpretation") has its origin in the Judgment of the ECJ of 18 July 1991 (Case C-260/89). According to the findings in this judgment when an internal action carried out by the national authorities falls within the scope of application of Union law, it must be interpreted in accordance with the fundamental rights recognized by the Union, and in accordance with the criteria that are set by the ECJ (§ 42 and 43). This jurisprudential line has been seconded in many judgments delivered by the ECJ.

Finally, the Judgment of 13 March 13 2007 (Case C-432/05) is the second judgment in which the ECJ has invoked the Charter of Fundamental Rights of the European Union. In this judgment the Court mentions the right guaranteed in Article 47 of the Charter, in relation to a matter in which, narrowly speaking, the application of any rule of Union law was not at stake. This jurisprudence is currently prevailing over the narrow approach explained above[1].

The latest step in the evolution of this provision with regard to the relationship between national and EU law is made in the Åkerberg court decision (C-617/10, 2013). Firsty, the Court supports a broad interpretation of Article 51.1, which, in the ECJ's view, "confirms the Court's case law relating to the extent to which actions of the Member States must comply with the requirements flowing from the fundamental rights guaranteed in the legal order of the European Union" (C-617/10, Åkerberg, para 18). In this case the Court denies, with reference to the Explanatory Note on Article 51 (Explanations, 2007), that it leads to a restriction on the application of its previous case-law on fundamental rights. The Court emphasized that according to those explanations, "the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law" (Explanations, 2007). The Court declared that fundamental rights guaranteed in the legal order of the EU are applicable in all situations governed by EU law. Thus, "if national legislation falls within the scope of European Union law, the Court, when requested to give a preliminary ruling, must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights the observance of which the Court ensures" (C-617/10, Åkerberg, para 19). Furthermore, the Court holds that:

[1] For a more recent example, see the Judgment of 23 September, 2008, Case C-427/06.

> Since the fundamental rights guaranteed by the Charter must therefore be complied with where national legislation falls within the scope of European Union law, situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable. The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter (C-617/10, Åkerberg, para 21).

In the next chapter I will examine the scope of the right to good administration as defined in Article 41. Given the conclusion in Åkerberg that the provisions of the Charter of Fundamental Rights of the EU are applicable to Member States when national measures fall within the scope of EU law, one would assume that this is also true of the right to good administration as stated in the same Charter (Kristjánsdóttir 2013, 244). The wording of Article 41, however, suggests otherwise.

THE SCOPE OF APPLICATION OF ARTICLE 41: THE RIGHT TO GOOD ADMINISTRATION

It seems that what was already said above is not so clear when I speak about the scope of application of the fundamental right to good administration guaranteed in Article 41 of the Charter. There is an apparent discrepancy between the *lex generalis*, which is concretized as I have already seen in the first chapter, in Article 51.1, and the provision concerning the right to good administration, in Article 41 (*lex specialis*) which begins as follows: "Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union" (Article 41.1).

If one carefully reads paragraph 1 of this Article it will be very easy to identify that what makes the right to good administration particular and different from what is stated in Article 51.1 of the Charter, is the definition of the scope of this specific right. As already explained in the introduction, this provision states the right of every person to have his or her affairs handled in a certain way by the institutions and bodies of the Union and it does not mention Member States. Its scope therefore seems to be defined as being narrower than that of the Charter as a whole (Article 51.1. of the Charter).

Does the Article 41 constitute an exception of the general rule established in the case-law and embodied in Article 51.1 of the Charter? The wording is clear but still there are some doubts as regards the real implication of this limitation of the right to good administration, among the legal experts in this field.

The wording of this Article has led many experts to understand that the components of the right to good administration are internal rights of the Union and do not reach the Member States. This has been considered by *Linde Paniagua* who said that this right can only be exercised autonomously before the Union (before the institutions, bodies and organs of the Union, the Ombudsman or the European Parliament), but never by the European citizens in the Member States. Article 41 contains rights in the internal scope of the Union, which do not affect the competence relations between the Union and the Member States (Paniagua 2008, 32-33).

Similarly, *Dutheil de la Rochére*, states that the obligations deriving from Article 41 are targeting only the institutions, bodies and organs of the Union. The author points out that the difference with the other rights is that Article 41 does not apply to the Member

States when they implement EU law. The rationale for this exclusion is to disregard Member States of having to consider the principles of good administration in purely national procedures, even when EU law should be applied. However, she also points out that this limitation may not be practical and recalls that the tendency of the ECJ is to impose common standards on Member States when they apply EU law (Dutheil de la Rochére 2008, 170). Similar views hold Mir Puigpelat (Mir Puigpelat 2010, 150-151). Other authors enforce the distinction between the right to good administration and the principles of good administration, concerning the limits of protection they offer. Therefore, they consider that the Article 41 of the Charter is applicable only to the activity of the institutions and bodies of the European Union, and constitutes an exception to the general provision as regards the scope of application given in Article 51 of the Charter. In their opinion, the European Courts are driving force for constant approximation of the concept of good administration also as a general principle of European Union Law, and that allow those general principles of EU law to be invoked by the Member States when acting in application of EU law. This does not mean, however, that the Member States should accept the principle of good administration as generator by individual rights enabling them, for example, to claim damages. Therefore, when the Member States implement EU law or act within the scope of application, will be obliged by the ECJ jurisprudence concerning the application of general principles (Hofmann *et al*. 2011, 203-204).

The opinions that defend the extension of the scope of application of the right to good administration to the national authorities when they implement EU law are also not missing. This argument is based on the fact that, according to the principle of indirect enforcement, there are many issues that the community institutions assign to the national administrations due to their decentralized management, and as a result of that tt the administrations of the Member States apply the EU law on a daily basis (Ferreiro 2015, 146). Those views lead towards rejecting the thesis that the provisions concerning the right to good administration of the Charter constitute an exception of the general provision enshrined in Article 51.1., even though the Article 41 does not mention the Member States and their obligation to guarantee the right to good administration. From this viewpoint, Martin Delgado pointed out that if the rights enshrined in Article 41 are to be met by the European institutions, this will not going to be within the spirit of the Charter, and big discrepancies will be made in the application of this right by the EU institutions and by the administration of the Member States.

It seems that a literal interpretation of the text of the Charter would give precedence to the special provision (Article 41) against the general rule in Article 51. Many of the authors do not believe, however, that this was the intention of the legislator. Given the specific nature of the rights mentioned in Article 41 - whose effectiveness only manifests within the framework of an administrative procedure and then is when they must be guaranteed - it has led the legislator to consider it difficult, if not impossible, regarding the current stage of the development of the European law, a harmonization of the administrative procedure systems of Member States, which could also enter into collision with the principle of procedural autonomy. If one carefully reads the Explanatory notes on Article 41 it can conclude that the right to good administration is based on a general principle of EU law and that this Article do not has an intention to overrule the ECJ's jurisprudence in this regard. The Explanations make reference to the case-law of the Court as a basis for the provisions in the Charter.

Therefore, the scope of good administration defined in Article 41 also raises questions as regards its conformity with the general principle of good administration (Kristjánsdóttir, 2013, 248). According to de Vries the Charter should not detract from the case-law of the Court and therefore its scope should coincide with that of the general principles of EU law (de Vries 2012, 22). This means that the limitation in Article 41 is not in accordance neither with the general scope of Article 51, nor with the scope of application and significance of the general principles of the EU law as defined in the Treaty of the European Union.

The analysis of the case-law demonstrates that the good administration is applicable to Member States as a general principle of EU law. In the case M.M v. Minister of Justice, Equality and Law Reform (Case-277/11, 2012), a question regarding the applicability of the right to be heard was raised. In his opinion of 26 April 2012, Advocate General Bot said that according to settled case-law, the right to be heard is a general principle of EU law "pertaining, on the one hand, to the right to good administration, laid down in Article 41 of the Charter and, on the other, to observance of the rights of defence and the right to a fair trial enshrined in Articles 47 and 48 of the Charter" (Case-277/11, Opinion of AG Bot, para. 31). Furthermore he states that:

> Observance of that right is required not only of the EU institutions, by virtue of Article 41(2)(a) of the Charter, but also – because it constitutes a general principle of EU law – of the authorities of each of the Member States when they adopt decisions falling within the scope of EU law, even when the applicable legislation does not expressly provide for such a procedural requirement *(Case*-277/11, Opinion of AG Bot, para. 32).

The same as the Advocate General Bot, the ECJ also maintain the applicability of the right to be heard to citizens of Member States based on a general principle of EU law. Namely, in this case the Court confirmed that according to the settled case-law, "the Member States must not only interpret their national law in a manner consistent with EU law but also make sure they do not rely on an interpretation which would be in conflict with the fundamental rights protected by the EU legal order or with the other general principles of EU law" (para. 93 of the Judgment)[2]. In the recent Case C-46/16 of 9 November 2017 the Court holds the same line. No additional comments are necessary to conclude that the right to good administration, despite the literal wording of Article 41 of the Charter, has an effect in practice also on the national administrations and it entails standardization of the procedural guarantees that integrates.

[2] See also: Joined Cases C-411/10 and C-493/10 N.S. and Others, 2011 ECR I-13905, paragraph 77.

CONCLUSION

The analysis carried out in this paper show an existence of a tendency to apply to the national administrations the same requirements that the European administration must fulfill regarding the procedural guarantees related with the administrative activity when it acts within the scope of application of the EU law. The Charter is part of the *Acquis Communautaire* and all public authorities of the EU, including both, the European and those of the Member States, must act in a way that will respect the fundamental rights enshrined at European level.

Considering the above mentioned in Chapter 3, it can be concluded that article 41 responds more to a cautious than imperative formulation. The question is currently reserved to the field of legal dogmatics, waiting for the European Court of Justice, with the legally binding Charter of Fundamental Rights in its hands, to decide on an alleged violation of any of the rights proclaimed in Article 41 by a national administrative authority in application of the EU law. It will be once again the ECJ that will establish the limits of the said formulation in Article 41.

A first step in the application of Article 41 of the Charter, will be to achieve and guarantee full respect of the rights proclaimed in this Article in the administrative procedures carried out by the European administration in the direct application of the EU law, leaving open the door to a future harmonization of the administrative procedural rules of the Member States when they implement EU law. 

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POLITICAL AND DOCTRINAL SOURCES AND VALUABLE FRAMEWORK OF THE POLITICAL ISLAM IN THE CONTEXT OF POLITICAL IDEOLOGIES

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Abstract

The relation between religion and politics is a field of mutual interaction, as well as source and promoter of many historical, current and probably future political movements, parties, and organizations. Political Islam represents the old-new dimension in the spectrum of contemporary political ideologies with specific characteristic and own socio-political worldview which pretend to penetrate into countries with Muslim inhabitants. The authors analyze those value's elements, their first term, and modern interpretation, as well as their indicators for change. Level and dynamic of society's development in many cases are determinate in political ideologies and Political Islam tries to present itself in this light with affirmation of its/own postulates of organization and regulation on socio-political living. This paper in addition to analyzing on those values' framework logically offers and review of political doctrine sources which concept Political Islam in the whole of its time-space aspects.

Keywords: Political ideology, Political Islam, Sharia law, Islamic parties, Islamic movements, Islamic values

INTRODUCTION

The relationship between religion and politics has always been a field of a kind of double-sided interaction. Regardless of whether the valuable socio-political continuum of a given society perceives it as a positive or negative trait of the respective political system, no one can completely ignore the significance of religion in human life. When the modernization and industrial revolution in Western societies pushed the church away from the domain of political action and practice (or passivated while remaining in the sphere of

social contemplation and spiritual queuing), the colonial powers engaged in the mission to impose such a quantum of convictions in the Islamic countries. Islamic movements in that spectrum emerged as a pure reaction to such subordinate attitude.

Matic and Bilandzic note a completely acceptable axiom in modern political discourse: "Knowers of the situation in the Middle East have long warned that political Islam in its various forms has long offered ideological alternatives not only to the existing Arab regimes but also to the entire existing world order" (Matic and Bilandzic 2010, 35). The plausibility of such claim is almost unquestionable. Following the situations of the Middle East, as well as everywhere where Muslims live, any attempt at their ignorance is ephemeral. And while the theory of modernity and development unanimously imply secularization and westernization, the acute debate in the Western world over the nature and character of not only Islamic parties and movements, but also the Islamic world as a whole, and its role, have been gaining ever-increasing dimensions (Tamini and Esposito 2000, 10). The problem of global terrorism, which most often relates to Islam as a religion and organizations with Islamic provenance, further reinforces the need to research what is meant by Political Islam and under such a valuable - ideological framework, where its primary sources of political orientation can be sought, as well as can we identify all Islamic parties and movements with violence and where can we look for the basic premise for such action? Not always when talking about that part of the world western journalism, so the scientific mainstream, looks with benevolence. The situation is on the contrary reverse. However, the phenomenon of the deprivation of religion is not new to us, and the absurdity of being greater occurs primarily in the United States and the countries of Latin America (Evangelical, Catholic), Israel (Zionist), etc.

Bearing in mind the fact that colonial slavery is right behind us (but not neocolonialism as a separate economic and political phenomenon), and largely culminated in the attempts for a plastic exogenous copy of the Western order models and the system of their values, as well as the demographic indicators for the expansion of Islam, as additional working questions for the past work we imposed several important moments: What is the political ideology and does political Islam have its own worldview, which to a considerable extent distance and from the classical ideological political spectrum? To what extent can the influence of the original Islamic writings be perceived and is there some kind of modifications of the principles so established, or are they subject to change and reinterpretation?

The above questions are a framework for the applicability of the research subject itself. The main goal will be to get to know a new concept that has occupied a very small space in the scientific and expert public. The author will try to enrich such a quantum and point out a research to serve as a guide for a deeper and more comprehensive approach to the same problem.

THE PHENOMENON OF POLITICAL IDEOLOGY AND THE POLITICAL ISLAM

The extent and dynamics of social development, as well as the directions for the future solution of social problems, are largely determined by the political ideologies contained in the programs, statutes, platforms, declarations, proclamations, and projects of political parties everywhere in the world. When Francis Fukuyama published his book "The End of History and the Last Man" in 1991, his theses on defusing ideologies and a definite victory of liberal democracy in a theoretical and praxeological sense proved to be extremely unsustainable, and in one hand even illusory. To claim that it is sometimes possible to leave the ideological-political contest and to behave politically in all political societies according to the Western model is a pure illusion. The significance of political ideologies in modern society is vast, despite the lay and groundless assertions that they have now disappeared or become socially irrelevant. Such claims are linked to the direction of action of political parties in almost all countries. As a working paradigm for political ideologies in the context of our labor, we would also use the framework provided by Andrew Heywood, who in a highly clandestine and simplified approach captures their wholeness and teleogeny. It primarily descriptively determines the political ideology as a more or less coherent set of ideas that provides an essence of organized political action, regardless of the purpose of such action - to preserve, modify or ruin the existing governing system. Hence, all ideologies: a) Provide a projection of the existing political rationale, usually in the form of a "worldview", b) Deliver a model for a desired future, or "a vision for a better society", c) Explain how and how it should the political change took place, i.e. how to get from a) to b) (Hejvud 2005, 12). In this direction, Heywood summarizes the ideology as a phenomenon in the following way:

> To examine a particular political ideology is to explore a particular type of political thinking differently of that in the political sciences or political philosophy. It also means analyzing the content of a particular political thought, being interested in ideas, doctrines, and theories that develop within different political traditions (Hejvud 2005, 5).

Such a contiguous undoubtedly divided through the prism of Bobbio (1997, 95) the contemporary political spectrum of the left, the right, and the center, so modern ideologies such as liberalism, conservatism, socialism, social democracy, have found their proper position in the political space.

Islam in the political narrative

Islam as a religion has always had immense social influence in the countries where the Muslim population lives. Historical and modern states were also named in behalf of the Islam (the four Rightly Guided – Rashidun Caliphs of Medina 632-661, the Umayyad Caliphate from Damascus 661-750, the Abbasid Caliphate in Baghdad 750-1258, the Ottoman Empire- the Sultanate of Turkey, The Safavid and Mogul Sultanate, from Iran or India, the Islamic Republic of Pakistan, the Islamic Republic of Iran, etc.), various national liberation movements of the 18th and 19th centuries that resulted in the formation of modern states (Sudanese Mahdi, Senussi in Libya, Fulani in Nigeria, Wahhabi in Saudi

Arabia), as well as socio-religious theorists, reformers and fundamentalists (Jamal al-din al-Afgani, Muhammad Abduh, Hassan al-Banna, Sayyid Qutb from Egypt, Abdelhamid Ben Badis of Algeria, Muhammad ibn Abd al-Wahhab of Saudi Arabia, Allal al-Fassi of Morocco, Syed Ahmad Khan and Muhammad Iqbal of Indonesia, Rashid Rida, Ali Shariati and Ayatollah Khomeini of Iran, Mevlan Mawludi of India, etc.), autocratic rulers (Libyan Muammar Gaddafi, Sudanese Gaafar Mahmoud Nimeiry, Egyptian Anwar Sadat, Pakistani Zulfikar Ali Bhutto and Zia ul-Haq, etc.), as well as terrorist organizations from their very appearance up to date (Muslim Brotherhood, Islamic Society – Jama'a al-Islamiyya, Hezbollah, Hamas, Harakat-ul-Mujahideen - Movement of the Holy Warriors, Al Qaeda, Al Jihad, Islamic Liberation Organization etc.). Its role in this direction is double: on the one hand, it serves as an excellent application mechanism for mobilization, and on the other hand, as a useful phenomenon for legitimizing the existing order and power. Recent political developments in the Arab world during and after the "Arab Spring" only reaffirmed the thesis on the influence and role of Islamic political parties and movements in the respective societies. Islamic parties such as *Ennahda* (Awakening) in Tunisia and the Muslim Brotherhood in Egypt have become a serious political player and a significant social representative of different strata of the population (here, are not only the low classes and exalted believers, but also famous businessmen, doctors, professors, etc.) (Lange 2012, 13). In a theoretical discourse, however, latent or explicitly Islamic societies and states in this setting make their own dichotomy of the world (earlier and contemporary): Muslim territories (Dar al-Islam) and non-Islamic areas (Dar al-Harb) (Esposito 2001, 62). Thus, Islamic societies and states, as well as other political subjects, make a clear distinction between their own territories and the scope of their influence. But the contemporary demographic expansion accompanied by the spatial expansion of Islam abstracts this distinction, although the official line still prevails in that regard.

Defining Political Islam

When we discuss political Islam, it is necessary to imply the need for its defining, as well as a distinction with the other terms that appear in this perspective. Thus, the terms are Islamic fundamentalism, Islamism, Islamic revivalism, and political Islam. We will operate the term Political Islam for several reasons. *Firstly*, the term Islamism is always identified with radical political movements outside the institutional framework of the existing political system, but there are many political parties that act within already existing constitutional orders (for example, Muslim brothers in Egypt, FIS in Algeria, Hadas in Kuwait, etc.). On the other hand, as Roxanne Euben notes, although perhaps the term "Islamism" is the most widespread, it is not universally accepted and often implies caution and limitations, especially according to many theorists, those who use the term in question did not capture the essence of Islam itself (Euben, 2015, 53). *Secondly*, the term fundamentalism can be used for all movements and parties that seek to recall the basic principles of religions in life, but also in a broader social context, a distinction that political Islam does not know in his own basic. As Hezbollah's former leader, Sayyed Muhammad Hussein Fadlallah, states:

> We are not fundamentalists, as the West sees us and we refuse to call it so. We are Islamic activists. From the etymological prism, the term fundamentalism (Usulia) denotes a reversal of the roots and origins, and

> our roots are the Quran and the Sunnah of the Prophet, and not the historical period in which the Prophet lived or the generations after him, that is, we do not want to live as people of that era (Euben 2015, 52).

Third, the concept of Islamic revivalism (awakening) can only refer to contemporary Islamic movements with its significant variations, and our goal is to determine a timeless and outspoken denominator, although we have different variables that affect the spatial-temporal metamorphoses, i.e. the source and the dynamics of the differences inside the Islamic phenomenon. Therefore, the term "Political Islam" seems to be most suitable for the simple reason that politics exist as a sphere of human activity from its very existence, and as we will see later from Islam itself, from its occurrence to this day.

Since we have solved the issue of semantic nature, we need to set the basic elements of the definition of Political Islam. The laconic approach would be most appropriate in that direction if we take into account the distinctions that we need to observe above. Sheri Berman, for example, defines political Islam as a set of ideas which indicate that Islam should be a guide to the political, social and private life of man (Berman, 2003, 258). Guilain Denoeux gives a comparatively similar definition that highlights in scientific credible circles the theories of political Islam, but still overwhelms its sociological dimension. We will note for a simplified reason that very skillfully captures the extensibility of this teaching itself. This phenomenon is understood as a form of instrumentalization of Islam by individuals, groups and organizations that pursue political goals. It provides political responses to today's social challenges with the imagination of the future, a foundation that relies on reorganized, reinvented concepts borrowed from the Islamic tradition (Denoeux 2002, 61). Matic and Bilandzic make a similar continuum of ideas, but pointing out that the term political Islam is used to denote a political-religious movement that believes that Islam is also a religion (Din), a way of life (Dunya) and a state (Dawlah), hence society and state should be organized according to Islamic law (Sharia, God's path) (Matic and Bilandzic 2010, 35). Michael Field, elaborating the reasons for the emergence of political Islam, implicitly offers a definition of the same, emphasizing it as a new ideal, which for the Muslim world is not an imported concept such as socialism, nationalism or the nation-state, but comes inherently from their culture as a response that provides rules for all aspects of life, including political power (Field 1994, 72).

Bearing in mind the offered definitions that they would accept in the paper, it seems that Esposito's thesis concludes that the responsibility of Islamic believers according to this worldview "exceeds all forms of other social, family and national responsibility, while politics is central because it embodies ways and means for the realization of Islamic principles in public life" (Esposito 2003, 153), affirms and emphasizes the inextricable link of the phenomenon political ideology with the second largest religion in the world.

POLITICAL AND DOCTRINAL SOURCES OF THE POLITICAL ISLAM

When we argue about political ideologies as an important element of the political system as a whole, and of the party system as its sub-system, the question arises where to look for the basic sources of such a worldview. For example, liberalism has Locke's "Two Treatises of Government", Marx's "Capital" socialism, Burke's conservatism "Reflections on the Revolution in France", etc. Even more significant in this light, as Wiktorowicz notes, "Political Islam is not a sui generis phenomenon. Despite ideological and worldviews, such collective action and its mechanisms demonstrate in itself the consistency of political Islam with other modern political movements" (Wiktoriwicz 2004, 3). Such point reinforces the thesis that the manifestations of political action are approximately identical, but the ideological view of the world is different. What is an essential feature of Political Islam as an ideology is the fact that religious texts and interpretations get a political dimension?

Andrew Heywood rightly concludes that it is nothing new for political ideologies to take ideas from the religious treasury, but such ideologies differ in that they do not treat religious ideas as a means of defending or decorating their own ideology, but as a matter of political thought itself (Hejvud 2005, 309). Hence, it is necessary to see the sources of such a valuable concept.

Qur'an

Undoubtedly the Quran (Loud Reading), received by Muhammad through the Malik Jibril (Archangel Gabriel) through the periodicals, and for the first time in 610 on the night that Muslims celebrate as the "Night of Power and Perfection" (Laylat al-Qadr), until the end of the same 632, collected after the Prophet's death, is the first and main source of the political worldview of all Islam. As almost no other religious announcement, the Qur'an contains and elaborates a wide range of socio-political categories that regulate various behaviors of human life. Actually political Islam as an ideology that necessarily demands respect for the given proclamations, and there is no political subject calling upon Islam to immanently emphasize any part of it. The Quran is composed of 114 chapters (Surah), each of which is more specific in verses (Ayah). It should be noted that there is a significant distinction between general and specific provisions in the very field. Thus, the former are more numerous and express ethical dimensions and principles, while the latter relate to ritual, family, commercial and criminal law (Al-Hibri 1992, 3). The interpretation of the Qur'an's content often creates divisions in the Islamic political spectrum, primarily in terms of whether its messages should be consistently interpreted or should be understood in the time-political circumstances of the era in which they are published (the division of conservatives, for example, Wahhabi, Qutb etc. and modernists such as Afghani, Han, Emin etc.). In a narrower sense of the political concept, only three terms, as noted by Gerhard Bowering, have a highly regarded point in Islamic political thought, although they do not have a prominent position in Qur'an himself: the Ummah, Caliph and Jihad (Bowering 2015, 196).

Sunnah and Hadith

The life of the Prophet Muhammad (with the religious intonation the attribute "Salla Allahu Alayhi Wa salam" – "God bless and peace be with Him", s.a.a.s.) is used and his example represent also one of the basic principles of political Islam. His example (Sunnah) contained in various texts - traditions (Hadiths) are an example of the action in the then and modern human life, both in the private and in the public sphere. Hence, many meaningful Hadiths speak of the prophetic practical aspect of acting in various fields such as political leadership, warfare, and peace, negotiations, personal hygiene, dressing, attitude towards family and parents, as well as towards friends and enemies. The Hadiths were collected for a period of 800 years and represent the second most important source beside the Qur'an. Sahih al-Bukhari, Sahih Muslim, Sunan al-Sughra, Sunan Ibn Majah, Sunan Abu Dawood, and Imam Malik are considered as the most important collections of Hadith. Formally there are two grounds for confirming their authenticity. The first, according to the order of the transmitters, who finally have to reach the first source - Muhammad himself or any of his friends. The second, content-related compatibility of the Hadith with the Qur'an or the rest of the already confirmed Hadith). In this context, there are several types of Hadiths, according to the way they are transmitted, and we would single out them: Mutawatir - hadith that heard the majority of the as-sahabah (companions of the Prophet) were transferred from people who would not speak untruth, have unquestionable authenticity; Musnad - Muttasil - hadith whose sened (chain of transmission) goes directly to the Prophet Muhammad; Ahaad - those Musnad-muttasil Hadiths transmitted by one individual; Mashhur - those Hadiths whose actuality arose later, and in the first Islamic century it was transmitted only by one person; Gharib - every hadith that ultimately carries only one person, that is, in the end, another person is opposed; Mevkuh - those Hadiths that have an undeniable senad (chain), but the first ruler (translator) did not utter "I heard the Prophet that he said" (Karalic 2010, 335-350). And finally, in terms of the degree of authenticity, the Islamic experts have divided the Hadith to: Sahih - the hadith which is transferred from credible and honesty to the end of the Seed, and at the same time does not contradict other relevant traditions and does not contain hidden shortcomings in itself (commonly found in Muslim and Bukhari); Hasan - the hadith that is continuously transmitted by credible rajas with a weaker precision and is not opposed to the most reliable ranks. In fact, the determinant difference between the sahih and the Hasan hadith consists in the fact that in the second degree of precision of the transmitter (rawij) it is not at the same level as the former; Daif - weak, unreliable, incomplete for various reasons (from the sened, ie chain of transmitters, the credibility of the rawij, i.e. transmitter or the precision of the rawij) (Karalic 2010, 352-360).

The Five Pillars of Islam

Islam contains five general provisions that are mandatory for every Muslim: 1) Recognition of Faith (Shahada), expressed through the motto "There are no other Gods except Allah, and Muhammad is his prophet"; 2) Five daily prayers (Salat); 3) Contribution, charity for the poor in the form of a tax of 2.5% of personal property and inheritance (Zakat); 4) All-day fasting, from sunrise to sunset during the holy month of Ramadan (Sawm); 5) A pilgrimage trip, a pilgrimage to Mecca, in Kaaba (Hajj). It is

important to notice that there is a big difference between the Christian apostrophe of "right" teaching (orthodoxy) and Islamic "right" action (orthopraxy). Such a distinction greatly points to the lack of distinction between practice and belief in the Islamic worldview. In other words, acting in all spheres of human life (including politics, of course) must be compatible with religious persuasion. Moreover, many Islamic activists are trying to reaffirm their daily lives and recapture them in parts where they were forgotten or neglected. Also important political events are related exactly to the five pillars, such as the Khomeini support banners during the pilgrimage to Mecca, the organization of numerous humanitarian activities with a 2.5% tax, and political gatherings in mosques after the prayer of the Muslims brothers in Egypt or interruption of clashes during the holy month of Ramadan in Lebanon, etc.

The Basic Principles of Islamic law

Similar to other political-legal systems (Continental and Anglo-Saxon), the Islamic law (Sharia) as well recognizes general principles that need to be observed in its interpretation and application. It is important to mention that, as we have seen above, Islam does not set the boundary between belief and practice, but stands for their conformity. In this direction, the following principles are distinguished: 1) Analogous conclusions (Qiyas) - when in the Quran or Sunnah no explicit provisions are noted for a certain question, and based on the contextual-conceptual connection, a logical conclusion is made (for example, the ban on the use of alcohol is derived from the ban on the disgust of wine); 2) Consensus (Ijma) - Islam seeks to create a firm cultural, spiritual and political connection of its community (Ummah). If we leave aside the question of the parameters of such success, we need to prophesy the statement of the Prophet Muhammad: "My community will never be unanimous in the delusion" (Esposito 2003, 142). Such a point of view also explains in this way the thesis why political Islam has various manifestations of certain phenomena such as terrorism for example; 3) Righteousness (Istihsan) and the public good (Maslaha) - the interpretation of certain Quranic provisions as well as the action of every Muslim should satisfy these principles. The concept of the resumption of Islamic society follows these road signs, and the whole Islamic political action (regardless of its methods) is directed towards their satisfaction (for example, Restoration of Islamic Law due to decadence infiltrated by the West, which contradicts the public good, condemnation of the western capitalism as an unjust and exploitative society, etc.); 4) Enjoining good and forbidding wrong (Hisbah) - this is one of the elementary axiological and praxeological conceptions of Islam as a religion that includes its political dimensions. They are related to the Hadith of the Prophet in which it is said: "I swear by the One in whose hands is my life that you either call for good and you turn away from evil, or soon Allah will send a punishment upon you, and you will pray, but you will not be forgiven" (Ferid 2012). Also, another Hadith noticed in Muslim is important to emphasize. The Prophet said: "Which one of you who sees something bad, let him remove it with your own hands, and if you cannot - then with your tongue, and if you cannot do so - with your own heart" (Ferid 2012, 5) Reinterpretation (Ijtihad) - many Islamic theorists and political activists are referring to the concept of reinterpretation in the light of the new circumstances and challenges facing today's society. As Azizah Y. Al-Hibri estimates: "Ijtihad is not concerned only with the delineation of the species from the general regulations, but goes even further, by implementing general

Islamic laws regulations that best suit a certain epoch and community" (Al-Hibri 1992, 5-6) Disagreement (Ikhtilaf) - divergence between the Islamic scholars (Ulama), opposite to the Ijima (consensus). This tendency, on one hand, emphasizes the possibility of flexibility in given societies and epochs; and on the other hand, it opens space for adapting and implementing contemporary humanistic trends (for example, civil-political and economic-social rights, women's rights, modernizations clusters and urban expansion, etc.).

It is especially important here to present the classifications of the nature of the legal rules in the Sharia, because they are essentially reflecting the obligatory nature of the actions of Islamic political and social subjects. Thus, generally the Fiqh (Islamic jurisprudence) knows two categories. The first refers to rules in relations, that is, decisive types ('amaliyya) and knows the following categories: a) Fardh - obligatory, what is ordered to do, that is to say, a duty (for example: Amentu Billaqi - belief in Allah, prayer, fast, etc.); b) Mustahab - it is advisable, there is no obligatory weight such as the fardh, i.e., the Wajib, but its fulfillment has benefits (e.g. sadaqah – voluntary charity, umrah - volunteer hajj, etc.); c) Mubah – permissibility, value-neutral activities, or a work for which no benefit or punishment is prescribed (e.g. seating, eating and drinking what is not forbidden etc.); d) Makrooh - unreasonable, rooted, but according to sharia there is no sanction for such a deed (for example, divorce); e) Haram - prohibited acts for which there are penalties in this world (al-dunya) and the other (al-akhira), i.e. eschatological (for example: murder, theft, etc.). The second category, in turn, refers to the rules related to the conditions, that is, the situation (wadia') and differentiates the following categories: Shart - condition, Sabab - cause, Mani – preventor, Ruksah and Azeemah - permission and enforcement, Sahih, Fasid, Batil – valid, corrupt, invalid, and finally, Adaa, Qadaa, I'ada – in time, deferred, repeat (Kamali 2005, 131-135).

VALUABLE FRAMEWORK OF THE POLITICAL ISLAM

Islam consistently denotes subjugation to God's will, and his followers Muslims - subjugates, adherents of such congruence. Political Islam has the general goal of realizing God's law and will and consistent integration of such value elements. In this context, Esposito emphasizes two essential features of the very Islamic concept: "The purpose of Islam is to provide guidelines and conditions for two kinds of interactions - first, the relationship between human beings and God, which is worship and second, interpersonal action, which in essence are social relations" (Esposito 2003, 141). Having in mind the above-mentioned determinants, we will carry sectional of the most important socio-political values of political Islam, which give us valuable framework of that ideology.

God's Sovereignty (Hakimiyya)

The theories of sovereignty for a long time in the XVIII and XIX centuries were an important center of political and philosophical debates on the old continent. The theocratic *vis-a-vis* national and people's theory of sovereignty only looked at the source, that is, the legitimacy of the sovereign power (whether the government is legitimate because it is "determined" by God or citizens or the nation). However, political Islam makes a clear distinction in relation to such views. For political Islam, God as a demiurge of all living beings in the world is the only sovereign or simplified, sovereignty is not

transferred to any human subject (Tawhid principle). Although it seems that this valuable imperative remains only at the meta-theoretical level, it will further serve as the basis for political organization and regulation (the principle of the Caliphs, actually heirs in the political aspect of the Sunnis, that is, Ayatollahs in the Shiites), or rejection or adaptation of contemporary concepts of democracy. For example, the reactionary wing, like the Pakistani theologian al- Mawmudhi, will describe the western concept of sovereignty as an invalid principle (Batil), which leads to evil and destructive consequences (Awakib Waqihiman Hadamah) (Sharif 1988, 210). Ayatollah Khomeini, on the other hand also links his concept of Islamic republicanism with the sovereignty of God, but according to his views, the legitimacy of power stems from God's subjects on the Earth, to which a small portion of such indisputable Allah sovereignty is transferred. It is precisely from this motto that there are numerous Islamic political movements, believing that this principle can bring the success, prosperity, and power of the Islamic community (for example Muslim Brotherhood and their branches in Algeria).

Sharia As a Sacred Life and Political Pattern

Islamic law (sharia) and its logic are basically an alternative to all political ideologies (liberalism, socialism, social democracy, conservative, etc.). The weakness and submissiveness of Muslim societies and their long colonial dependence and subordination have a basis in its disregard or oblivion. Westernism and secularization, considered as a by-product of the capitalist countries of Western Europe and primarily from the United States, lead to the decomposition and decadence of Islamic society. The message in that sense (for example from the movements/parties of the Muslim Brotherhood or Jama'a al-Islamiyya) clearly suggests that a state order must be established, which for the Muslims basically consists in the sharia. Islamic law, however, is not a homogeneous category, and as we have pointed out above, there are different angles of its observation and interpretation. The best-known schools (Madhabs) in this direction are Hanafi in the Arab world and southern Asia, the Hanbali in Saudi Arabia, the Shafi'i in East Africa and Southeast Asia, the Maliki in northern, central and western Africa, and the two main Shi'ite schools - the Ja'fari and the Zaidi. From the aspect of political Islam, they define and explain Islamic law, which provides a plan for the functioning of a good society, and what is an Islamic ideal (Demiri 2009, 31-32). What is most important when considering Sharia is its rigidity in the penal field or bounders (Hudud, penalties which include stoning adulterers, cutting the thief's hand, etc.). Still, it should be emphasized that they are limited to several spheres: fornication, false testimony to fornication, theft, and the use of alcohol. It is also important to mention two more important elements of Sharia as its essential characteristic: one is the ban on bounty and interest (Riba), and the other is the counseling for the important political and social issues of the establishment (Shura). From the latter, the modern (re) interpretations of solidarity and democracy in the Islamic world are drawn.

Anti (neo) - Colonialism

Political Islam, by nature of things, seems its opponent's figure (Schmitt's figure of a political enemy) has western colonial powers. Latent or explicitly the reaction of Islamic movements is primarily anti-colonial. All actions on their own bases have the

liberation from Western colonialism or the modern neo-colonial placement. The terrorist attacks of radical Islamic groups and the political actions of Islamic parties (such as the Islamic Pan-Malaysian Party, the National Islamic Front in Sudan, the Islamic Liberation Front "FIS" in Algeria, the Muslim League in India, etc.) (Salih 2009, 5-6) with acute rhetoric when it comes to international politics expressed in that part. The colonial and neocolonialist policies of the United States and European allies distinguish three fundamental reactions. In fact, anti-colonialism as a value component remains, but the political reaction gets different dimensions. The one direction, denoted as rejection and deviation, is retreated following the example of Muhammad's relocation from Mecca to Medina (Hijrah) or the obligatory war (Jihad) against "unbelievers" begins. The latter accepts Westernization and secularization, guided by the incremental paradigm of political action (such as Ataturk's Turkey) (Voll 1987, 6). Finally, the last - Islamic reformism is trying to bridge the gap between the aforementioned solutions, emphasizing the need to adopt Western values in the light of Islamic teaching and practice. The divisions within the Islamic parties and movements in the past and now are most extremely visible in terms of this issue. The holders of colonial rule and such period of contemporary political history raised the perception of inferiority, backwardness and aggressiveness in the reaction to the Western world, as well as the feeling of returning to Islamic principles of organization, resistance (intifada), and glorification of the golden age of Islamic spread and Arabic campaigns in the Muslim world.

Distinction between Secularism and Modernism

The latter value element is actually a different species for political Islam as an ideology. The Western hemisphere has elevated secularization woven into modernity at the level of a political ideal that often binds necessarily to democracy, human rights and freedoms and contemporary trends. However, political Islam makes a clear distinction between secularism and modernization. The first is absolutely unacceptable, and the second is a benevolent relationship. As we have seen above, secularism is incompatible with the first and second value element of political Islam. Secularization is considered a source of social decadence, moral decline, and political instability. Separation of religion from the state's institutional system according to Political Islam contributes only to the suppression of religious postulates and a new kind of servitude to the west. On the other hand, modernization is not a controversial phenomenon. Many Islamic leaders are in touch with modern technology and communication achievements, and they serve as a medium for the diffusion of Islamic ideas and teachings (for example Khomeini, Mohammed Morsi, and even Bin Laden regularly had their video addresses to the masses). Moreover, the supporters of political Islam, the so-called "Islamic states" such as Iran are in an accelerated step with the development of science and technology (such as in the nuclear program). There are several arguments regarding this worldview. First, secularization as a concept owes its inheritance to the French Revolution, and it is also affirmed largely in American society in order to any group in multi-religious does not have any religious privileges.

Secondly, many Western countries such as Great Britain, Germany, and Canada have a state religion, which is not an obstacle to the perception of their democracy or modernity. Thirdly, the secularization attempted by the European colonizers of the Arab

world has thrown that part of the world into a long period of subjugation, dependence, and inferiority. Political Islam in that light was defined as a doctrinal and socio-cultural static phenomenon, and therefore anti-modern and ultimately anti-democratic (taking it as a primary factor religion). In that direction, the ban on wearing a women's cover (Hijab), as well as the aid or the tacit agreement for a coup in Egypt after the victory of the Muslim Brotherhood candidate Mohamed Morsi in the presidential election and the trial against their members (and similar events were identified in Algeria 1992, when the Front of the Islamic Rescue FIS won the local and parliamentary elections) only amplify the perception of animosity towards socio-cultural Islam, which has far-reaching consequences on the political plane. Armando Salvatore rightly concludes that major innovative changes in the modernization of the Islamic world were made by young Islamists and historians who understood the types of intellectual modernization as a multiplied connection with the specifics of development, capitalist production and markets before any apparent confrontation with threats of western modernity (Salvatore 2015, 138).

Mandatory Struggle (Jihad)

Undoubtedly, the most exposed element in political Islam is Jihad. There is almost no political party, movement or platform that does not emphasize the importance of the mandatory struggle. Jihad is invoked and called upon by different movements (Muslim Brotherhood, Islamic Society - Jama'a al-Islamiyya, Hezbollah, Hamas, Harakat–ul-Mujahideen - Movement of Holy Warriors, Al Qaeda, Al Jihad, Islamic Liberation Organization, Islamic Jihad, Islamic State of Iraq and Levant), political-military leaders from the beginning of Islam until today (Husayn ibn Ali, Muhammad bin Qasim, Saladin, Baibras, Shamin Alam Khan, Muhammad Ali Jinnah, Saddam Hussein, Osama bin Laden etc.), Islamic theorists (Hassan al-Banna, Mamudhi, Sayyid Qutb etc.). It can be correct to say that there is no term that in recent years is not so extensible and gets different connotations in the modern world. The el-Jihad group, for example, marked Jihad as the "sixth pillar of Islam" (Jansen 1986, 161). However, the different interpretation of this term leaves an opportunity to be used with different meanings (spiritual, military, political) because one of the most sacred duties and benefits of every Muslim is the struggle of God's way. That is why the term fight or struggle, and not war is terminologically used. In addition, a distinction is made between the so-called Small and Great Jihad. According to a certain hadith, the Prophet, returning from battle, pointed out that after the end of the little one, the greater one follows - dedicated to the fight against human selfishness, corruption, and evil (Esposito 2003, 122). The terrorist activities and militant movements, of course, have a basic principle of Jihad, but there is a contemporary tendency to emphasize it in a spiritual and socio-cultural sense, including the sense of the Islamic parties.

CONCLUSION

The era of political ideologies is not stagnant. In contemporary societies, despite the spatial insuperability of modernization, ideologies play an influential role in the contemporary political action. There is almost no country or region that is not influenced by contemporary ideologies in the direction of their shaping, modification, stagnation or progress. Each political system is characterized by the content of the political ideologies, that is, the ideological orientation of the political parties stuck in the party system, as well as their tendencies and alternatives that make it up.

Political Islam is an old-new dimension of the contemporary political spectrum. Characteristic from the beginning until today, it always finds its own way of penetration into political and social life. As such, it undoubtedly possesses its own specific features and features that are to some extent converge, and somewhat diverge from other known and affirmed ideological worldviews. For example, the concept of divine sovereignty (Hakamiah), as well as the extreme rigidity of certain punishments (Hudud) is almost incompatible with any contemporary political ideology; the concept of anti-colonialism, the charity for the poor (Zakat), the ban on bounty and interest (Riba) can find tangible points of socialism and nationalism, etc. Like any other ideology, the political and doctrinal sources of political Islam can be identified. In our case, this would be in the primary scriptures - the Qur'an, the hadith of the Sunnah, and the basic principles of Sharia. We can freely conclude that if socialism has Marx, liberalism - Locke, conservatism - Burke, Political Islam has the Qur'an and Muhammad. Primary sources, like other ideologies, have space for their development and reinterpretation.

The issue of political Islam and its connection with violence and extremism have been thrown in the direction of studying only from a security - related point of view, but not from ideological and political. It is precisely the value framework, as well as the sources, which give us the right to conclude that there may be a twofold possibility. Regressive interpretation and extremism on the one hand, and possible integration and adaptability in the modern age on the other. It is precisely the legalization and networking in the party competition that caused fear in Western civilization from its proclamation and extension. The direction to which it will move further is determined by different variables, among which the exogenous (actually, the foreign policy relationships) have an influential role.

Political Islam allows considerable space for its further development, adaptation, and certainly assimilation. The demographic indicators in the world affirm our initial motive for this paper. Undoubtedly, the Islam as a socio-cultural and certainly religious phenomenon becomes present everywhere. Hence, we should not be deceived that the assimilation towards the European and Western views would come to a priori or be a necessary. Exactly in this direction there are further dimensions of the intensity and content of this ideology's development will have to be sought. 

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